

Andrea D. McGary, CA SBN 215703
THE McGARY FIRM
Attorneys At Law
505 Montgomery Street, 11th FL
San Francisco, CA 94111
Email: assistance@themcgaryfirm.com

Telephone: (415) 874-3500
Facsimile: (877) 243-9183
Attorneys for Plaintiff and Counter-Defendant
Steven A. Gray

MELINDA HAAG (CABN 132612)
United States Attorney
THOMAS MOORE (ALBN 4305-O78T)
Chief, Tax Division
CYNTHIA L. STIER (DCBN 423256)
Assistant United States Attorney
11th Floor Federal Building
450 Golden Gate Avenue, Box 36055
San Francisco, California 94102

Telephone: (415) 436-7000
Fax: (415) 436-7009
Attorneys for the Defendant / Counter-Claimant
United States of America

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT CALIFORNIA
SAN FRANCISCO DIVISION

STEVEN A. GRAY,

Plaintiff ,

vs.

UNITED STATES OF AMERICA; and
DOES 1 through 30, inclusive.

Defendant.

UNITED STATES OF AMERICA,

Counter-Claimant,

vs.

MANUEL MARTINEZ and STEVEN A.
GRAY

Counter-Defendants

Case No. CV 11-0680 SC

STIPULATION & ~~PROPOSED~~
ORDER TO CONTINUE PRETRIAL,
ADR, AND TRIAL DEADLINES

Case filed: February 15, 2011

IT IS HEREBY STIPULATED by and between Plaintiff/ Counter-Defendant STEVEN A. GRAY (sometimes hereinafter "Plaintiff GRAY") and Defendant/Counter-Claimant UNITED STATES OF AMERICA (sometimes hereinafter "Defendant USA"), by and through their attorneys of record, that GOOD CAUSE exists and the parties request that the Court continue the pretrial and trial deadlines based on the following:

1. The suit involves liability for the Trust Fund Recovery Penalty for quarters ending March 31, 2007, September 30, 2007, December 31, 2007, March 31, 2008, and June 2008 as to federal employment taxes owed by Ace Roofing, Inc., a California corporation owned by MANUEL MARTINEZ.

2. Plaintiff/ Counter-Defendant GRAY disputes allegations that he was a responsible officer of Ace Roofing, Inc. and allegations that he willfully failed to collect, account for or turn over withholding and F.I.C.A. taxes with respect to Ace Roofing's employees for said periods. Mr. GRAY asserts that he was not a "Responsible Person" nor was he "Willful" within the meaning of 26 U.S.C § 6672 and the applicable court cases there under, nor under any other federal law provision.

3. Plaintiff GRAY has filed a *Certification of Interested Entities or Persons* as follows:

Name	Connection or Interest
ACE ROOFING, INC., a California corporation Agent For Service Process – Manuel D. Martinez	Principal debtor failing to tender federal employment taxes due to Defendant United States of America
MANUEL D. MARTINEZ 9065 Lakewood Drive Windsor, CA 95492	Principal debtor failing to tender federal employment taxes due to Defendant United States of America
MADELINE M. MARTINEZ 9065 Lakewood Drive Windsor, CA 95492	Spouse of Principal debtor failing to tender federal employment taxes due to Defendant United States of America and transferee of assets belonging to MANUEL MARTINEZ AND ACE ROOFING, INC.

4. Counter-Defendant MANUEL MARTINEZ has stipulated to entry of judgment and has been dismissed from this action.

5. Pursuant to Federal Rule of Civil Procedure 16(b)(4), good cause exist for the Court to

1 modify its September 9, 2011 *Order Continuing Trial and Pretrial Deadlines* and October 18,
2 2011 *Order Selecting ADR Process Early Neutral Evaluation*.

3 6. Assistant US Attorney Cynthia Stier, Esq. was recently been assigned to this matter
4 during Assistant US Attorney Blake Stamm's extended leave. Plaintiff/ Counter-Defendant
5 STEVEN A. GRAY and Defendant/Counter-Claimant UNITED STATES OF AMERICA have
6 been engaged in renewed settlement negotiations and are exploring settlement options that require
7 certain government verification and approvals that will not be completed 1) prior to the current
8 January 5, 2011 Discovery cut-off, 2) January 10, 2012 deadline for the parties' Early Neutral
9 Evaluation ["ENE"] Briefs, 3) January 12, 2012 ENE Conference, 4) January 16, 2012 ENE
10 deadline, and 5) January 13, 2012 hearing on Plaintiffs' motion for joinder of Madeline
11 Martinez. If settlement is feasible, all matters may be taken off calendar without additional
12 expenditure of the parties' and the Court's resources.

13 7. The parties are mindful of and respectful of the Court's September 9, 2011 *Order*
14 *Continuing Trial and Pretrial Deadlines* and October 18, 2011 *Order Selecting ADR Process*
15 *Early Neutral Evaluation* but as detailed herein above additional times is required to explore
16 settlement options and reach settlement if feasible. A short continuance of the discovery cut-off,
17 ENE, pretrial, and trial deadlines is necessary to allow the parties to complete their pending
18 settlement exploration and obtain necessary government verifications and approvals if full and
19 final settlement can be reached.

20 8. Based on the foregoing, the parties respectfully request that this Court 1) modify its
21 September 9, 2011 *Order Continuing Trial and Pretrial Deadlines*, 2) modify its October 18,
22 2011 *Order Selecting ADR Process Early Neutral Evaluation*, and 3) continue the current
23 discovery cut-off and all pre-trial and trial related dates for at least thirty (30) days including but
24 not limited to the dates requested below:

25 ///

26 ///

27 ///

28 ///

	Current Deadline	Proposed Deadline
Mediation / Early Neutral Evaluation Deadline	January 16, 2012	February 22, 2012
Discovery Cut-Off	January 5, 2012	February 9, 2012
Motion Hearing Cut-Off	January 13, 2012	February 17, 2012
Hearing On Motion For Joinder Of Madeline Martinez	January 13, 2012	February 17, 2012
Pre-Trial Conference	February 24, 2012	March 30, 2012
Trial	March 5, 2012	April 9, 2012

Dated: December 22, 2011

The McGary Firm

By: /s/
Andrea D. McGary, Esq.

Attorneys for Plaintiff/Counter-Defendant
STEVEN A. GRAY

Dated: December 22, 2011

United States Attorney Office,
Tax Division

By: /s/
Cynthia L. Stier, Esq.
Assistant United States Attorney
Tax Division

Attorneys for Defendant/Counter-Claimant
UNITED STATES OF AMERICA

ORDER

Upon consideration of the parties' *Stipulation & [Proposed] Order To Continue Pretrial, ADR, and Trial Deadlines*, and good cause appearing therefor,

IT IS HEREBY ORDERED that the pretrial and trial deadlines be continued as follows:

	Previous Deadline	Revised Deadline
Mediation / Early Neutral Evaluation Deadline	January 16, 2012	February 22, 2012
Discovery Cut-Off	January 5, 2012	February 9, 2012
Motion Hearing Cut-Off	January 13, 2012	February 17, 2012
Hearing On Motion For Joinder Of Madeline Martinez	January 13, 2012	February 17, 2012
Pre-Trial Conference	February 24, 2012	March 30, 2012
Trial	March 5, 2012	April 9, 2012

IT IS SO ORDERED.

Dated: December 27, 2011

Honorable Samuel Conti

United States District Court Judge